

10/112,020

### REMARKS

Claims 1-3 remain in this application.

In order to emphasize the patentable distinctions of applicant's invention over the prior art, claim 1 has been amended to recite a bandage providing a cooling effect to a user, comprising: (i) a flexible and leak proof cold pack container having a first end and a second end; (ii) a first bandage support member permanently attached to the first end of said cold pack container; (iii) a second bandage support member permanently attached to the second end of said cold pack container; (iv) at least one chemical agent and at least one solution collectively disposed within said cold pack container, which, when mixed, undergo an endothermic reaction; (v) means for separating said agent and said solution within at least one chamber within said cold pack container of said bandage, at least one portion of said separating means being easily broken or ruptured so that said agent and said solution may be mixed; (vi) a first skin-adhesive portion located on said first bandage support member for affixing the bandage to the body of said user; (vii) a second skin-adhesive portion located on said second bandage support member for affixing the bandage to the body of said user; and (viii) a sterile portion adapted for contact with the area of the body to be covered by said bandage. Each of the foregoing amendments is clearly supported by the original specification. Consequently, no new matter has been added.

Applicant's invention provides a bandage with cooling capabilities for a user that includes bandage support members and a flexible and leak proof cold pack member permanently attached and positioned between the support members. The cold pack member includes a chemical which endothermically reacts with water, positioned

adjacent to but separate from a water source inside a common package, to instantly cool the cold pack member upon activation. The cold pack member further comprises a sterile pad member positioned on the bottom side of the bandage, which may include an antibiotic, anesthetic, antipyretic, burn medicament, or combinations thereof.

### **Claim Rejections – 35 USC § 103**

Claims 1 and 3 were rejected under 35 USC 103(a) as being unpatentable over Pyrozyk et al. (USP 5,431,622) in view of Caillouette (USP 3,643,665).

Pyrozyk et al. discloses a thermal bandage apparatus for simultaneously dressing and thermally treating a wounded bodily area. The thermal bandage apparatus includes a fluid absorbent member having a wound-contacting surface for absorbing bodily fluids produced by an open wound. A holding means adjacent and connected to the fluid absorbent member holds a thermal medium against the fluid absorbent member such that heat is transferred between the thermal medium and the open wound by thermal conduction through the fluid absorbent member. There is also disclosed an arrangement for providing a continuous supply of heat or cold to a wound.

Caillouette discloses a therapeutic pack containing chemicals that produce a temperature-changing chemical reaction, e.g. endothermic or exothermic. The chemical components for the reaction are held spaced apart within a bag by a fracturable means, e.g. a diaphragm. The bag incorporates an insulation cover, e.g. minutely expanded polystyrene paper and aluminum foil, various portions of

which may be selectively removed to provide an effective heat-transfer path of a predetermined size, to accomplish the desired therapeutic treatment.

The Examiner has indicated that it would have been an obvious design choice to one having ordinary skill in the art to modify the thermal dressing of Pyrozyk et al. substituting its thermal pack for the thermal pack of Caillouette since the applicant has not stated that the disclosed thermal pack of the instant invention solves a particular problem. (Applicant respectfully submits that the thermal dressing of Pyrozyk et al. does not include a thermal pack, but instead includes a pocket for insertion of a thermal pack.)

Applicant respectfully traverses the Examiner's rejection of claims 1 and 3 over Pyrozyk et al. in view of Caillouette. It is respectfully submitted that Pyrozyk et al. in view of Caillouette does not teach or suggest each element of claims 1 and 3, as amended. MPEP 2143.03 states that in order to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed.Cir. 1988).

Clearly, the suggested combination of Pyrozyk et al. in view of Caillouette does not teach or suggest a bandage providing a cooling effect to a user, comprising: (i) a flexible and leak proof cold pack container having a first end and a second end; (ii) a first

bandage support member permanently attached to the first end of said cold pack container; and (iii) a second bandage support member permanently attached to the second end of said cold pack container, as called for by present claims 1 and 3. Because the cold pack container defined by present claims 1-3 is integrally and permanently attached to the first and second bandage support members, it is more reliable and easier to use than any device constructed by the combined teachings of Pyrozyk et al. in view of Caillouette.

It is submitted that any bandage constructed in view of the Pyrozyk et al. disclosure, taken in view of Caillouette, would include an interior space that is accessed by a slit, thereby forming a pocket. See col. 2, lines 42-60. The Examiner has suggested the combination of the bandage of Pyrozyk et al. with the cold pack of Caillouette. During use of any bandage constructed in light of the combined teachings of Pyrozyk et al. and Caillouette, a user must perform a two-step process: firstly, the user must locate a separate cold packet (i.e. the cold pack disclosed by Caillouette), and secondly, the user must insert the cold pack into the pocket of the bandage. By way of contrast, the bandage disclosed by present claims 1-3 is a single-piece unit, wherein the cold pack is integrally and permanently attached to the first and second bandage members.

Several disadvantages are inherent with the thermal bandage disclosed by Pyrozyk et al. in view of Caillouette. Such disadvantages include, *inter alia*, the following: (i) valuable time is wasted searching for the separate cold pack to be inserted into the bandage having a pocket, whereas the bandage of present claims 1-3 includes the cold pack/ bandage as a single unit; (ii) during movement of the user's body, especially if the bandage is placed on such bodily extremities as the arms and/or legs, the cold pack of the bandage disclosed by the combined teachings of Pyrozyk et al. and Caillouette will be

prone to movement out of the pocket and possible expulsion from the pocket of the bandage; and (iii) the user will experience difficulty when inserting a properly-sized cold pack into the pocket of the bandage; that is, the size of the cold pack must approximate that of the pocket for a tight fit, which could lead to a tearing of the cold pack during its insertion (because of the close-fit tolerance) and possible leaking of the cold solution therewithin.

It is respectfully submitted that the combined teachings of Pyrozyk et al. in view of Caillouette fail to disclose or suggest every element of claims 1 and 3, as amended. Significantly, nowhere does Pyrozyk et al. disclose or suggest that a cold pack be permanently attached to the bandage. Instead, Pyrozyk et al. requires the use of a separate cold pack that is inserted into a pocket on the bandage. Similarly, nowhere does Caillouette disclose or suggest the presence of bandage support members being permanently attached to its cold pack. Finally, Pyrozyk et al. in view of Caillouette does not disclose or suggest a cold pack being permanently attached to first and second bandage support members at both its ends, respectively. Instead, because the device suggested by the combination of the above-cited references discloses a cold pack that can be removed from the pocket and disassociated from the bandage at any time, it is respectfully submitted that present claims 1 and 3 are patentable over Pyrozyk et al. in view of Caillouette.

Accordingly, reconsideration of the rejection of claims 1 and 3 under 35 USC 103(a) as being unpatentable over Pyrozyk et al. in view of Caillouette is respectfully requested.

Claim 2 was rejected under 35 USC 103(a) as being unpatentable over Pyrozyk et al. in view of Caillouette, and further in view of Keedwell (USP 3,900,027).

Keedwell discloses a process for making integral absorbent pad bandages from nonwoven thermoplastic fibrous sheet material, compressing the sheet in selected portions to reduce thickness and porosity and delimit an absorbent pad portion having a greater thickness. The resulting sheet material has a plurality of juxtaposed integral absorbent pad bandages, which can be cut off to obtain individual bandages. The individual bandages are in one piece, and can have adhesive applied thereto if desired.

It is submitted that claim 1 patentably defines over Pyrozyk et al. in view of Caillouette, and further in view of Keedwell, since the proposed combination of the references does not disclose nor suggest a cold pack container permanently attached to first and second bandage support members as called for by present claim 1. Because claim 2 depends from independent claim 1, it is submitted that claim 2 is patentable over the cited references for the very same reasons.

Accordingly, reconsideration of the rejection of claim 2 under 35 USC 103(a) as being unpatentable over the combination of Pyrozyk et al., Caillouette, and Keedwell is respectfully requested.

### CONCLUSION

In view of the amendments to the claims and to the abstract, and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the rejection of claims 1-3, and their allowance are earnestly solicited.

Respectfully submitted,  
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